

# BONNEVILLE PURCHASING INSTRUCTIONS TRANSMITTAL SHEET

**Issued by Purchasing/Property Governance – DGP-7**

  
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**SUBJECT: BPI UPDATE 11-4 EFFECTIVE DATE OCTOBER 1, 2011**

**SUMMARY OF CHANGES:** An online copy of the BPI is available at <http://www.bpa.gov/corporate/business/bpi/>. The online BPI is a conformed copy with all changes included as of the current date and shall be effective until superseded. Archived editions of the BPI are retained by the Head of Contracting Activity and located in the agency approved Electronic Records Management System.

The following changes are implemented via this transmittal:

<b>Topic</b>	<b>BPI section</b>	<b>Change</b>	<b>Clauses</b>
Field Purchase Categories & Dollar Thresholds	2.3	Clarifies field purchase categories and dollar limits under BPI 2.3.3.1 and increases dollar limits under 2.3.3.1 for services to \$2500.	n/a
Level of Required Documentation	4.2.1(a)	Changes the level of required documentation to that of an independent third party with no knowledge of the item/services being procured.	n/a
Records Management	4.2.3(b)	Directs retention and disposal of official files/file retention pursuant to Information Governance and Lifecycle Management program as set forth in the BPAM.	n/a
Legal Review of Indemnification Clauses	4.3(a)(4) & 4.3(a)(6)	Requires legal review of vendor indemnification clauses with limited exception for IT COTS procurements; clarifies that the purchase of IT noncommercial products or services must receive legal review.	n/a
Order of Precedence	14.4.1.1	Requires Clause 14-3 Order of Precedence to be included in all solicitations and contracts.	<b>Revised clause usage prescription:</b> 14-3 Order of Precedence
Homeland Security	14.18	Requires that performance of development, design, maintenance or support services where the Contractor may receive BPA's Critical Information (CI) be performed within U.S.; restricts transfer of CI to US citizens; updates contact information for reporting cyber security incidents.	<b>Revised clause and usage prescription:</b> 14-17 Homeland Security
Intellectual Property	Part 17	Part 17 revised in its entirety: addressing COTS, commercial and noncommercial IT procurements; new	<b>Revised clauses:</b> <b>17-1.1</b> Authorization & Consent-Research, Development & Demonstration Projects

		commercial and noncommercial IT procurement clauses; information assurance clause	<b>17-1.2 Authorization &amp; Consent-Procurement of Noncommercial Items or Services</b> <b>17-2.1 Patent Rights-Ownership by Contractor</b> <b>17-2.2 Patent Rights-Ownership by BPA</b> <b>17-3 Rights in Data-Noncommercial Software</b> <b>17-4 Rights in Data-Use of Existing Work</b> <b>17-5.1 Rights in Data-Creation of New Work</b> <b>17-5.2 Rights in Data-Creation of New Work, Restricted</b> <b>17-6 Commercial Software-No Contractor License</b> <b>17-7.1 Infringement Indemnification-Software</b> <b>17-7.2 Infringement Indemnification-Patents</b> <b>17-8 Source Code Escrow-Third Party Agent</b> <b>17-9 Source Code Escrow-BPA as Agent</b>  <b>New clauses:</b> <b>17-10 Commercial Software-Contractor License</b> <b>17-12 Modifications to Commercial Software</b> <b>17-13 Patent &amp; Copyright Infringement Notice</b> <b>17-14 Software Warranty</b> <b>17-15 Hardware and IT Equipment Warranty</b> <b>17-16 IT Service Warranty</b> <b>17-19 Survival of Perpetual License</b> <b>17-20 Information Assurance</b>
Nondisclosure Clauses	17.6.2 11.4.3; & 12.1.1	Authorizes CO use of nondisclosure clauses to protect offerors' and contractors' information in RFOs and contracts; Critical Program Information (CPI) now referred to as Critical Information (CI); clarification of CO authority to execute Nondisclosure Agreements.	<b>Deleted clause:</b> <b>12-1 Disclosure of Offeror's Proposal</b>  <b>New clauses:</b> <b>17-21 Nondisclosure for RFO</b> <b>17-22 Nondisclosure During Contract Performance</b>
Expert/Consultants	23.1.2(f)	Requires COs to notify Disbursements upon HCA approval under 23.1.2(e) for acquiring expert/consultant services to assure proper setup of tax withholdings prior to payment.	n/a

## **DETAILS OF SUBSTANTIVE CHANGES**

1. Field Purchase Authority under BPI 2.3.3.1 is revised to standardize the dollar limits for emergency, urgent, and other field purchases. Additionally, the dollar limit for services purchased under BPI 2.3.3.1 has been

increased from \$2000 to \$2500. These changes are effective for purchases on or after the effective date of this update. Purchases prior to the effective date of this update shall be processed according to the previous dollar limits.

2. The level of documentation required to explain business decisions in BPI 4.2.1 is revised from that of a “journeyman buyer with sufficient market knowledge of the item/service purchased” to the level necessary for “an independent third party with no knowledge of the item/service being procured.” COs shall use this level of documentation for RFOs and contracts on or after the effective date of this update.

3. BPI 4.2.3 is updated to clarify that retention and disposal requirements for official files are now found in the Information Governance and Lifecycle Management policy in the BPAM.

4. BPI 4.3 Review of Purchasing Actions for Legal Sufficiency is revised to include purchasing actions involving the use of non-BPI contract clauses for Indemnification. OGC review is not required for commercial off the shelf (COTS) IT infringement indemnification clauses if BPA’s indemnification is capped at an amount not to exceed the license fee or support/maintenance fee. OGC review is required for noncommercial, significantly modified commercial, or custom developed IT products or services.

5. The clause usage prescription for Clause 14-3 Order of Precedence is revised to apply to all procurements. COs should include a clause similar to Clause 14-3 in all new solicitations and contracts.

6. BPI 14.18 Homeland Security and corresponding Clause 14-17 are updated to reflect a change in DOE terminology from Critical Program Information (CPI) to Critical Information (CI). Clause 14-17 is revised to require contract performance for development, design, maintenance, or support services, where the contractor receives BPA’s CI, software, data or technology, to be performed within the U.S. by U.S. citizens. Contact information for BPA’s Office of Cyber Security is also updated. COs shall include Clause 14-17 Homeland Security in all solicitations and contracts where the contractor may receive BPA’s CI, software, data or technology in the performance of the contract, or any other instance where the CO or requisitioner determine it is necessary to protect BPA’s interests. COs shall modify existing contracts to include the revised clause where appropriate.

7. Part 17 Patents, Copyrights and Data is revised in its entirety. The revised Part 17 addresses policy and provides new clauses for commercial and COTS IT procurements. The existing policy for noncommercial IT procurements is clarified and existing clauses are revised. New clauses are added to facilitate the use of vendors’ software licenses where appropriate. COs should modify existing contracts to include the revised clauses where appropriate.

8. Contractor’s information may be protected from nondisclosure during the solicitation and during contract performance through CO’s use of either Clause 17-21 Nondisclosure for RFOs or Clause 17-22 Nondisclosure During Contract Performance, where appropriate. Existing contracts may be amended to include Clause 17-22 where appropriate. Use of a vendor’s stand alone nondisclosure agreement requires OGC approval. Disclosure of BPA Critical Information is subject to the restrictions of BPI 11.4.3. CO’s warranted authority does not include authority to sign an NDA disclosing BPA’s CI information.

9. BPI 23.1.2(f) clarifies CO’s responsibility to notify Disbursements of HCA approval to contract for expert/consultant services through an HCA waiver. This allows Disbursements to setup tax withholdings prior to payment of the expert/consultant in compliance with IRS regulations.